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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. MICHAEL JAMES CRAWFORD, Defendant and Appellant.	H044698 (Santa Clara County Super. Ct. No. C1231836)

Defendant Michael Crawford appeals from an order, issued following a bench trial, sustaining a petition to extend his commitment as a mentally disordered offender (MDO) for one year under Penal Code section 2970.[1] He argues that his jury trial waiver was invalid and that the court erroneously admitted hearsay evidence. The appealed-from order extending defendant's MDO commitment has expired, rendering his appeal moot. Accordingly, we dismiss the appeal.

I. BACKGROUND

On November 29, 2012, defendant pleaded guilty to felony unlawful driving or taking a vehicle (Veh. Code, § 10851, subd. (a)), felony evading a police officer while driving with willful disregard for safety (Veh. Code, § 2800.2, subd. (a)), driving under the influence (Veh. Code, § 23152, subd. (a)), and driving on a suspended license (Veh. Code, § 14601.1, subd. (a)), and he admitted a strike prior in exchange for a 32-month prison sentence. Pursuant to section 2962, defendant was committed to a state hospital

[1] All further statutory references are to the Penal Code unless otherwise noted.

for treatment as a condition of his parole on January 24, 2014. Defendant's parole and section 2962 commitment were set to terminate on January 25, 2017. On June 20, 2016, the district attorney filed a petition with the superior court seeking to convert defendant's involuntary commitment to a commitment under section 2970 and to extend that commitment for one year until January 25, 2018.

The trial court held a hearing on that petition on December 8, 2016. Defendant was represented by counsel and appeared by closed circuit television from the state hospital. Defense counsel requested "to set this for a court trial . . . [and] waive jury [trial] . . . ." The court asked defendant whether he understood that he had "a right to a jury trial with regard to this matter?" Defendant responded, "Yes, I do." The court then asked, "And you're waiving your right to that jury trial and requesting a court trial?" Defendant responded, "Yeah, I am."

The court held a bench trial on February 22, 2017. The court admitted defendant's RAP sheet and medical records over defense counsel's hearsay objections. In overruling those objections, the court expressed its view that *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*) applies only to jury trials and criminal proceedings.

A forensic psychologist at the state hospital where defendant was committed testified as an expert in psychology and mentally disordered offender evaluations. She opined that defendant met the criteria for an extension of commitment, suffered from schizoaffective disorder bipolar type, posed a substantial danger of physical harm to others, and had serious difficulty in controlling his dangerous behavior. She based those opinions on two interviews with defendant, a review of his medical records, and consultation with his treatment team. Over defense counsel's hearsay and *Sanchez* objections, the expert discussed specific incidents involving defendant, only some of which were described in defendant's medical records.

The trial court granted the petition and ordered defendant's commitment extended for one year until January 25, 2018. Defendant timely appealed.[2]

II. DISCUSSION

A. The MDO Act

"The Mentally Disordered Offenders Act (Pen. Code, § 2960 et seq.) provides for involuntary civil commitment as a condition of parole for prisoners who are found to have 'a severe mental disorder' if certain conditions are met. (§ 2962, subds. (a)-(f).) The commitment is for a term of one year and may be extended annually for an additional year on petition of the district attorney. [Citation.]" (*People v. Dunley* (2016) 247 Cal.App.4th 1438, 1442, fns. omitted (*Dunley*); see §§ 2970, subd. (b); 2972, subds. (a), (b).) The trial on a petition to extent commitment "shall be by jury unless waived by both the person and the district attorney," and the "court shall advise the person of his or her right to be represented by an attorney and of the right to a jury trial." (§ 2972, subd. (a).)

B. The Appeal is Moot and Raises No Issues Likely to Recur While Evading Appellate Review

"A case becomes moot when a court ruling can have no practical effect or cannot provide the parties with effective relief. [Citation.] By the nature of MDO proceedings, in which a new commitment order must be sought every year, issues arising in such proceedings can most often not be decided on appeal quickly enough to provide any relief to the person committed." (*Dunley*, *supra*, 247 Cal.App.4th at p. 1445.) This case is no exception. The recommitment order from which defendant appeals expired on January 25, 2018, while this appeal was pending.

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[2] On January 7, 2019, the Attorney General requested judicial notice of court minutes and an order, which demonstrate that the trial court granted a subsequent petition to extend defendant's commitment for another year, until January 25, 2019, following a May 2018 bench trial. The request is granted. (Evid. Code, §§ 452, subd. (d), 459.)

We have the discretion to nevertheless reach the issues raised if they are "likely to recur while evading appellate review" and "involve[] . . . matter[s] of public interest," so as to provide "guidance [for] future proceedings." (*People v. Cheek* (2001) 25 Cal.4th 894, 897-898 [deciding issues raised by an expired commitment order under the Sexually Violent Predator's Act, Welf. & Inst.Code, § 6600 et seq., before affirming the Court of Appeal's judgment dismissing the appeal as moot]; *Dunley*, *supra*, 247 Cal.App.4th at pp. 1443, 1445 [reaching legal issues likely to reoccur in MDO proceedings while evading appellate review despite mootness of appeal]; *People v. Gregerson* (2011) 202 Cal.App.4th 306, 321 [same].)

Defendant concedes that his appeal is "technically moot," but he urges us to exercise our discretion to reach the legal issues he raises. We decline that invitation because, as discussed below, the issues he raises have not evaded appellate review.

1. The Standard Governing the Validity of a Jury Trial Waiver in an MDO Proceeding Has Not Evaded Review

In *People v. Blackburn* (2015) 61 Cal.4th 1113, 1124-1125, 1137, our Supreme Court construed section 2972, subdivision (a) as requiring that a defendant in an MDO recommitment proceeding be personally advised of the right to a jury trial, and that any waiver of that right be personal, knowing, and voluntary. Defendant argues that what constitutes a knowing and voluntary waiver of the section 2972, subdivision (a) right to a jury trial is an issue of public importance that is likely to recur while evading appellate review. While the issue defendant identifies is an important one, it has not evaded appellate review.

On June 19, 2017, after the bench trial in this case, our Supreme Court issued *People v. Sivongxxay* (2017) 3 Cal.5th 151, 167, reaffirming that there is no "specific method for determining whether a defendant has made a knowing and intelligent waiver of a jury trial in favor of a bench trial[, and that courts] instead examine the totality of the circumstances. [Citations.]" *Sivongxxay* "offer[ed] some general guidance to help ensure

that a defendant's jury trial waiver is knowing and intelligent, and to facilitate the resolution of a challenge to a jury waiver on appeal." (*Id*. at p. 169.) Specifically, the court "recommend[ed] that trial courts advise a defendant of the basic mechanics of a jury trial in a waiver colloquy, including but not necessarily limited to the facts that (1) a jury is made up of 12 members of the community; (2) a defendant through his or her counsel may participate in jury selection; (3) all 12 jurors must unanimously agree in order to render a verdict; and (4) if a defendant waives the right to a jury trial, a judge alone will decide his or her guilt or innocence. [The court] also recommend[ed] that the trial judge take additional steps as appropriate to ensure, on the record, that the defendant comprehends what the jury trial right entails . . . by[, for example,] asking whether the defendant had an adequate opportunity to discuss the decision with his or her attorney, . . . asking whether counsel explained to the defendant the fundamental differences between a jury trial and a bench trial, or . . . asking the defendant directly if he or she understands or has any questions about the right being waived." (*Id*. at pp. 169-170.)

Defendant suggests that whether the guidance set forth in *Sivongxxay* applies to MDO proceedings is an open question and one likely to recur while evading appellate review. In fact, our colleagues in the Second District have applied *Sivongxxay* in the MDO proceeding context. (*People v. Blancett* (2017) 15 Cal.App.5th 1200, 1205-1206 [appeal from order denying section 2966, subdivision (b) petition contesting initial MDO commitment determination].) Accordingly, we cannot conclude that the applicability of *Sivongxxay* to MDO proceedings is likely to evade appellate review.

2. Whether Sanchez *Applies to Civil Commitment Hearings, Including Those Involving Bench Trials, Has Not Evaded Review*

Defendant contends that whether *Sanchez* applies to civil commitments, including commitments ordered following court trials, is a matter of public interest likely to recur while evading appellate review. We disagree, given that, since the time of defendant's

February 2017 trial, numerous appellate court opinions have addressed the applicability of *Sanchez* to civil matters generally, civil commitment hearings specifically, and bench trials.

The California Supreme Court issued *Sanchez* in June 2016. In that seminal case, the court held that "[w]hen any expert relates to the jury case-specific out-of-court statements, and treats the content of those statements as true and accurate to support the expert's opinion, the statements are hearsay." (*Sanchez*, *supra*, 63 Cal.4th at pp. 670, 686.) The court rejected as illogical the proposition that such "statements are not being admitted for their truth" and "disapprove[d its] prior decisions concluding that an expert's basis testimony is not offered for its truth, or that a limiting instruction, coupled with a trial court's evaluation of the potential prejudicial impact of the evidence under Evidence Code section 352, sufficiently addresses hearsay and confrontation concerns." (*Id*. at p. 686 & fn. 13.) The court was persuaded to abandon its prior reliance on "the premise that expert testimony giving case-specific information does not relate hearsay" by "[t]he reasoning of a majority of justices in *Williams*[*v. Illinois* (2012) 567 U.S. 50, which] call[ed that premise] into question . . . ." (*Id*. at p. 683; *id*. at p. 684 ["We find persuasive the reasoning of a majority of justices in *Williams*"]; *Williams*, *supra*, 567 U.S. 50 [considering the admissibility of expert testimony in appeal following bench trial for rape].)

Because "[t]he admission of expert testimony is governed not only by state evidence law, but also by the Sixth Amendment's Confrontation Clause," the *Sanchez* court further held that where "a prosecution expert seeks to relate *testimonial* hearsay, there is a confrontation clause violation unless" the requirements set forth in *Crawford v. Washington* (2004) 541 U.S. 36 (*Crawford*) are met. (*Sanchez*, *supra*, 63 Cal.4th at pp. 679, 686.) That is, unless "(1) there is a showing of unavailability and (2) the defendant had a prior opportunity for cross-examination, or forfeited that right by

wrongdoing." (*Id*. at p. 686.) The *Sanchez* court noted that the rule articulated in *Crawford* "has not been extended to civil proceedings . . . ." (*Id*. at p. 680, fn. 6.)

Appellate courts have considered the applicability of *Sanchez* to civil matters and have held that its holding "concerning state evidentiary rules for expert testimony (Evid. Code, §§ 801-802) applies in civil cases . . . ." (*People ex rel. Reisig v. Acuna* (2017) 9 Cal.App.5th 1, 10 (*Acuna*) [appeal from a civil judgment, issued following a bench trial, permanently enjoining public nuisance activities of a criminal street gang]; see *People v. Bona* (2017) 15 Cal.App.5th 511, 520 (*Bona*) ["Although *Sanchez* is a criminal case, it also applies to civil cases—such as this one—to the extent it addresses the admissibility of expert testimony under Evidence Code sections 801 and 802"]; *People v. Burroughs* (2016) 6 Cal.App.5th 378, 405, fn. 6 [same].)

Appellate courts also have addressed whether *Sanchez* applies to civil commitment hearings, and have held that it does.[3] (See *Bona, supra,* 15 Cal.App.5th at p. 520 [on appeal of MDO commitment order issued after bench trial, holding that *Sanchez* applies in MDO proceedings to the extent it clarifies the admissibility of expert testimony under the Evidence Code]; *People v. Jeffrey G.* (2017) 13 Cal.App.5th 501, 507 (*Jeffrey G.*) [*Sanchez* applies to bench trial on petition for transfer from state hospital

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[3] In an apparent attempt to cast doubt on the validity of rulings of the "intermediate appellate courts . . . [applying *Sanchez*] to civil commitment proceedings," the Attorney General asserts that "[i]n *Sanchez*, the California Supreme Court specifically declined to determine whether its holding applied to civil proceedings." The Attorney General misreads *Sanchez* and the intermediate appellate court rulings. As discussed above, *Sanchez* addressed both "state evidentiary rules for expert testimony" and the limitations the Confrontation Clause places on the admission of such testimony. (*Acuna, supra*, 9 Cal.App.5th at p. 34.) The *Sanchez* court noted that, "[b]ecause *Crawford* is based on the Sixth Amendment right to confrontation, its rule has not been extended to civil proceedings . . . ." (*Sanchez, supra*, 63 Cal.4th at p. 680, fn. 6.) That caveat applies only to the portion of the *Sanchez* court's holding concerning the Confrontation Clause. The intermediate appellate courts have not applied that aspect of *Sanchez* only to civil commitment proceedings. Rather, courts of appeal have applied *Sanchez*'s holding regarding the rules of evidence to civil commitment proceedings.

to a conditional release program by person committed after being found not guilty by reason of insanity]; *People v. Yates* (2018) 25 Cal.App.5th 474, 483 ["courts have held *Sanchez* applicable to [sexually violent predator commitment] proceedings in several published opinions . . ."].)

Finally, appellate courts have held *Sanchez* applicable to bench trials. (See *Acuna*, *supra*, 9 Cal.App.5th at p. 9; *Bona*, *supra*, 15 Cal.App.5th at p. 515; *Jeffrey G.*, *supra*, 13 Cal.App.5th at p. 504.)

In these circumstances, we cannot conclude that the issues defendant raises are likely to evade appellate review. Therefore, we decline to address them.

III. DISPOSITION

The appeal is dismissed as moot.

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ELIA, ACTING P. J.

WE CONCUR:

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BAMATTRE-MANOUKIAN, J.

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MIHARA, J.

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